IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 181 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

ARUNODAYA MILLS LTD

Appearance:

1. INCOME TAX REFERENCE No. 181 of 1988
MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 12/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions have been referred for our opinion in respect of assessment year 1977-78:-

(i) "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that C.I.T. had no jurisdiction to pass order under section 263 of the I.T. Act, 1961 in respect of an assessment order which is passed after complying with the provisions of section 144B of the I.T. Act, 1961 ?"

(ii) "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the entire assessment order merged with the Appellate order even though the appeal was preferred only in respect of some of the questions in the original assessment order could not be the subject of revision under section 263 in respect of questions for which no appeal was filed ?"

2. The reference arises from the order in Income Tax Appeal No.1617 of 1982 wherein the Tribunal relied on the decision of this Court in the case of Shri Arbuda Mills Ltd. and held that in exercise of the powers under section 263 of the Income Tax Act, 1961 (hereinafter referred to as `the Act'), the Commissioner had no jurisdiction to set aside the assessment even in respect of the items which were not the subject matter of appeal before the CIT (Appeals).

3. We have heard Mr BB Naik, learned counsel for the revenue. Though served, none appears for the respondent-assessee.

4. The learned counsel for the revenue has drawn our attention to the decision of the Apex Court in CIT vs. Shri Arbuda Mills Ltd. (1998) 231 ITR 50 wherein the Court considered the amendment to the provisions of section 263 (1) of the Act made by the Finance Act, 1988 w.e.f. June 1, 1988 which was again amended by the Finance Act, 1989 with retrospective effect from June 1, 1988 to the effect that where any order referred to in the sub-section and passed by the Assessing Officer had been the subject matter of any appeal (whether before or after 1st June, 1988), the powers of the Commissioner under the sub-section shall extend and shall be deemed always to have been extended to such matters as had not been considered and decided in such appeal. The Apex Court, therefore, held that the order of assessment

passed by the Income Tax Officer under section 143 (3) read with section 144B of the Act, had not merged with that of the Commissioner (Appeals) passed in respect of the items which were not the subject matter of the appeal, so as to exclude the jurisdiction of the CIT under section 263.

5. Following the aforesaid decision, we are of the view that the Tribunal was not right in holding that the CIT had no jurisdiction to pass order under section 263 of the Act in respect of an assessment order which was passed after complying with the provisions of section 144B of the Act. We are also of the view that the Tribunal was not right in coming to the conclusion that the entire assessment order merged with the appellate order, even though the appeal was preferred only in respect of some of the questions in the original assessment order. Hence, the tribunal was not right in holding that the original assessment order could not be the subject matter of revision under section 263 in respect of questions for which no appeal was filed.

6. Accordingly, our answer to both the questions is in the negative i.e. in favour of the revenue and against the assessee.

7. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

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